



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Christopher T. Craig, Esq.
Sparks & Craig LLP
6862 Elm Street
Suite 360
McLean, VA 22101

DEC 22 2008

RE: MUR 5958

Tom Davis for Congress and Mary Jane Sargent,
in her official capacity as treasurer

Dear Mr. Craig:

By letter dated December 12, 2007, the Federal Election Commission notified your clients, Tom Davis for Congress and Mary Jane Sargent, in her official capacity as treasurer ("Tom Davis for Congress Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on December 11, 2008, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

The Commission admonishes the Tom Davis for Congress Committee that the failure to include a disclaimer on all public communications paid for with federal campaign funds violates 2 U.S.C. § 441d(a). The Commission further cautions the Tom Davis for Congress Committee to take steps to ensure that this activity does not occur in the future.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

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If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Sidney Rife
Assistant General Counsel

Enclosure
Factual and Legal Analysis

cc: The Honorable Thomas M. Davis III
Vienna, VA 22181

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENT: Tom Davis for Congress and Mary Jane Sargent,**
7 **in her official capacity as treasurer**

MUR 5958

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9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission
11 ("Commission") by C. Richard Cranwell, Chairman of the Democratic Party of Virginia.
12 See 2 U.S.C. § 437g(a)(1). The complaint alleges that Tom Davis for Congress and Mary Jane
13 Sargent, in her official capacity as treasurer ("the Committee") paid for communications
14 supporting the re-election campaign of a nonfederal candidate without including the disclaimers
15 required by 2 U.S.C. § 441d(a) of the Federal Election Campaign Act of 1971, as amended, ("the
16 Act").

17 Based on the facts presented in the complaint, the response, as well as other available
18 information, the Commission has determined to exercise its prosecutorial discretion to dismiss
19 the complaint as it pertains to the Committee's apparent violation of 2 U.S.C. § 441d(a). See
20 *Heckler v. Chaney*, 470 U.S. 821 (1985).

21 **II. FACTUAL AND LEGAL ANALYSIS**

22 **A. Factual Summary**

23 During October and November 2007, the Committee disbursed \$729,952.12 of in-kind
24 and direct contributions to the Devolites Davis State Senate campaign. According to disclosure
25 reports filed with the Commission, the Committee disbursed \$434,412.12 for in-kind
26 contributions to Devolites Davis' State Senate campaign, broken down as follows: \$365,175 to a
27 media production company for television broadcasts; \$61,399.75 for printing and mailing written

1 communications; and \$7,837.37 for utility, office space, staff salary and other miscellaneous
2 expenses. 2007 Year-End Report, Schedule B. In addition, the Committee disclosed \$295,000
3 in direct contributions to the Devolites Davis State Senate campaign. *Id.* It appears that the
4 Committee complied with the Act's reporting requirements when disclosing the disbursements.
5 2 U.S.C. § 434(b)(4); 11 C.F.R. § 104.3(b). All of the funds used by the Committee to make
6 contributions to the Devolites Davis State Senate campaign appear to have been raised in
7 compliance with the limits and prohibitions of the Act. The Devolites Davis State Campaign
8 committee reported to the Virginia State Board of Elections the receipt of in-kind contributions
9 from the Committee and related disbursements to vendors in amounts which correspond to that
10 which the Committee disclosed to the Commission. Complaint, dated November 2, 2007,
11 at Exhibit A.

12 The complaint provided samples of the communications supporting Devolites Davis,
13 which it alleges the Committee purchased but lacked the appropriate disclaimers pursuant to
14 2 U.S.C. § 441d(a). Complaint, at Exhibit B. Two of the communications are printed campaign
15 advertisements, one is a script for a television advertisement, and another is a reference to a
16 television advertisement at <http://www.youtube.com/watch?v=iGZkIydbOeY>. *Id.*

17 The communications either support the re-election of Devolites Davis to State office or attack her
18 opponent. The communications make no mention of Congressman Tom Davis, any federal
19 election, or federal candidate. *Id.* The advertisements contain disclaimers that they were paid for
20 and/or sponsored by Ms. Devolites Davis' State committee. *Id.* Respondent contends that the

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1 disclaimers contained on the communications comply with Virginia disclosure laws governing
2 State elections. Response, dated January 14, 2008, at 3.

3 According to the response, Jeannemarie Devolites Davis for State Senate Committee
4 initially paid for the production, broadcast, and mailing of the communications at issue.
5 Response, at 3 - 4. However, beginning in October 2007, the Committee paid for the cost of
6 end-of-campaign broadcasts and distribution of print advertisements. *Id.* Respondent states that
7 "the advertisements did not change, only the technicality of who paid for a particular broadcast or
8 other distribution changed." *Id.*

9 **B. Legal Analysis**

10 **1. Permissible Non-campaign Use of Funds**

11
12 The Act expressly permits federal candidates and officeholders to donate campaign funds
13 from their authorized committees to State and local candidates subject to the provisions of State
14 law. 2 U.S.C. § 439a(a)(5). In addition, federal campaign funds can be used for "any other
15 lawful purpose" other than personal use. 2 U.S.C. § 439a(a)(6); *see also* AOs 2007-29 (Jackson)
16 and 2000-32 (Martinez)(donation of funds to State and local candidates permissible). The
17 Committee's in-kind and direct contributions to the Devolites Davis State Senate campaign
18 appear to constitute permissible non-campaign use of funds. 2 U.S.C. § 439a(a)(5) and (6).

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1 Neither the Act, and its implementing regulations, nor Virginia State law limit the amount
2 of funds that the Committee may donate to Ms. Devolites Davis' State Senate campaign.¹
3 2 U.S.C. § 441i(e)(1)(B); 11 C.F.R. § 300.62. With respect to non-Federal elections,
4 Commission regulations also require that funds raised and spent by federal candidates and
5 committees be in amounts and from sources that are consistent with both the Act and applicable
6 State law. 11 C.F.R. § 300.62. A review of the disclosure reports reveals that the funds
7 disbursed by the Committee comply with the amount and source limits of the Act and
8 Commission regulations. Accordingly, the amount of funds the Committee may donate to
9 Ms. Devolites Davis' State Senate Campaign committee is not restricted by 2 U.S.C.
10 § 441i(e)(1)(B) or 11 C.F.R. § 300.62, because there are no contribution limits in Virginia.
11 See discussion at n.1, *supra*.

12 **2. Disclaimer Requirements**

13
14 The Act requires a disclaimer whenever a political committee makes a disbursement "for
15 the purpose of financing any communication through any broadcasting station,.....mailing, or any
16 other type of general public political advertising..." 2 U.S.C. § 441d(a). Furthermore, the
17 regulations require that "all public communications" made by a political committee must include
18 a disclaimer. 11 C.F.R. § 110.11(a)(1). A public communication includes any broadcast, cable,
19 or satellite communication or mass mailing. 11 C.F.R. § 100.26. A "mass mailing" means a

¹ There are no contribution limits in Virginia. A committee can accept contributions from any individual, corporation, union, association or partnership (except foreign nationals or foreign corporations). It is only required that all contributions received by the committee, and that all required information identifying the contributor, be reported on the committee's campaign finance reports. Virginia State Board of Elections, *Summary of Virginia's Campaign Finance Laws and Policies for Candidate Campaign Committees*, Section 3.1 (revised July 1, 2007), http://www.sbe.virginia.gov/cms/Campaign_Finance_Disclosure/Index.html.

1 mailing by United States mail of more than 500 pieces of mail matter of an identical or
2 substantially similar nature within any 30-day period. 11 C.F.R. § 100.27.

3 Section 441d(a), as further explained in 11 C.F.R. § 110.11(a)(1), requires a disclaimer
4 on all public communications for which a political committee makes a disbursement, without
5 regard to content or purpose. In 2002, the Explanation and Justification for 11 C.F.R.
6 § 110.11(a)(1) stated, “[t]he scope of the disclaimer requirement for political committees [was
7 expanded] beyond communications constituting express advocacy and communications soliciting
8 contributions.” 67 Fed. Reg. 76962, 76964 (December 13, 2002). In 2006, the disclaimer
9 regulation was revised to require disclaimers on all public communications “made by a political
10 committee.” 11 C.F.R. § 110.11(a)(1).

11 The disclaimer must be presented in a “clear and conspicuous manner” in order to give
12 the reader, observer or listener “adequate notice of the identity of the person or political
13 committee that paid for and, where required, that authorized the communication.” 11 C.F.R.
14 § 110.11(c)(1). A disclaimer, if paid for and authorized by a candidate or an authorized
15 committee of a candidate, must clearly state that the communication has been paid for by the
16 authorized political committee. 11 C.F.R. § 110.11(b)(1).

17 Beginning in October 2007, the Committee paid \$365,175 to a media production
18 company for television broadcasts and \$61,399.75 for printing and mailing of written
19 communications in support of Devolites Davis. 2007 Year-End Report, Schedule B. The
20 Committee, Tom Davis’ principal campaign committee, meets the definition of a “political
21 committee” as defined by the Act. 2 U.S.C. § 431(4) and (5). The Committee’s payments to

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1 vendors for the television broadcasts and printing and mailing of written communications
2 constituted disbursements for public communications.² 11 C.F.R. §§ 300.2(d)(1), 100.26 and
3 100.27. Accordingly, disclaimers were needed for all communications paid for directly by the
4 Committee with federal campaign funds, without regard to content, even though the
5 communications were in connection with a non-federal election. 2 U.S.C. § 441d(a).

6 However, given the totality of the circumstances in this matter, which include the fact that
7 the advertisements contained a disclaimer as to the State candidate's information, and that all of the
8 expenses were timely reported to the Commission as in-kind contributions to, and disclosed to the
9 public by, the recipient State candidate, the Commission has determined to exercise its prosecutorial
10 discretion to dismiss the matter as it pertains to the Tom Davis for Congress Committee's violation
11 of 2 U.S.C. § 441d(a), and issue an admonishment. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

² While we do not have specific information that the written communications were comprised of more than 500 pieces of substantially similar mail, it appears from the costs of the printing and mailing (e.g., \$61,399.75) that they met the regulation's quantity requirements for mass mailings.